

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 88/AIL/Lab./J/2011, dated 15th April 2011)

NOTIFICATION

Whereas, the Award in I.D. No.36/2007, dated 21-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Unicorn (Bangalore) Private Limited, Puducherry and Thiru P. Raguraman over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Tuesday, the 21st day of December 2010

I. D. No. 36/2007

P. Raguraman . . . Petitioner

Versus

The Managing Partner,
Unicorn (Bangalore) Private Limited,
Mettupalayam, Pondicherry. . . Respondent

This industrial dispute coming on 20-12-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, advocate for the petitioner and Thiruvalargal K.V. Shanmuganathan and L. Vivekananthan and Mrs. V. Vaijayanthimala, advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry vide G.O. Rt. No.155/2007/Lab./J, dated 14-11-2007 for adjudicating the following:—

1. Whether the non-employment of Thiru P. Raguraman by the management of M/s.Unicorn(Bangalore)Private Limited, Pondicherry is justified or not?

2. To what relief, he is entitled to?

3. To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was an employee as Machine Operator from 1-8-1999. The workers formed a trade union. Therefore the management did not allow the entire work force to work exactly 60 members from February 2004 and hence the union raised industrial disputes with the management and also before the Labour Officer (Conciliation). Before the Labour Officer (Conciliation), the management did not heed the request of the petitioner. Therefore, an Industrial Dispute has been referred to the court. In the reference, the name of the petitioner has been left out and hence he raised a separate dispute on 6-2-2008, wherein which the management alleged that the petitioner has done a serious misconduct of habitual absence without leave. The reply made by the management 29-5-2006 admitting the petitioner's capacity and denying the culpabilities of the management in not allowing the workers to work after starting the trade union. Therefore, the management wants to remove the petitioner from the rolls of the company. Since the petitioner has involved in the union activities, he was dismissed from service without conducting any domestic enquiry and therefore it has violated the principle of natural justice. Hence, this industrial dispute is filed.

3. In the counter statement, the respondent has stated as follows :

The petitioner was appointed as Trainee in the respondent company on 1-8-1999 and during the year 2001, the management of the respondent company was taken over by the present management. The petitioner was on probation when the present management took over the respondent company. The petitioner was irregular in reporting for duty. He was given several warnings in that regard. He had absented himself without sanction of leave in unauthorised manner for 69 days in 2002 and 34 days in 2003. In this regard, a memo. was issued to him

on 20-1-2004 seeking his explanation. He had duly received the same. However he did not choose to give any reply. He had worked only for 3½ days in January 2004. In this regard, a notice was issued to the petitioner on 3-2-2004 and even thereafter he did not report for work. However, the management did not precipitate any action against him. The petitioner did not make any representation to the respondent seeking for reinstatement immediate after the so called termination during February 2004. The petitioner has raised the present dispute only to make wrongful gain from the management. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner. PW.1 was examined and Ex.P1 to Ex.P4 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R8 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point:

It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he was an Executive Committee member in the Union of the Industrial Estate Workers functioning in the respondent company and since he was involved in the union activities, he along with some other workers were denied employment and subsequently he was dismissed from service without holding any domestic enquiry. In order to prove the same, the petitioner was examined as PW.1 and PW.1 in his evidence has deposed the said version and through him. Ex.P1 to Ex.P4 were marked.

7. *Per contra*, the contention of the respondent is that the petitioner had absented himself without sanction of leave in unauthorised manner for 69 days in 2002 and 34 days in 2003 and in this regard, a memo. was issued to him on 20-1-2004 seeking his explanation. He had duly received the same. However he did not choose to give any reply. He had worked only for 3½ days in January 2004. In this regard, a notice was issued to the petitioner on 3-2-2004 and even thereafter he did not report for work.

8. In order to prove the contention of the respondent, Ex.R1 to Ex.R8 were marked. Ex.R1 is the copy of the letter submitted by the petitioner to the Conciliation Officer wherein the petitioner requested the Conciliation Officer to advise the respondent to reinstate him in service. Ex.R2 is a letter, dated 15-4-1996 wherein the petitioner has given undertaking not to take leave from 15-4-1996 to 30-4-1996. Ex.R3 is the

copy of the memo., dated 25-8-1999 issued to the petitioner for the unauthorised absent on 23-8-1999 and 24-8-1999. Ex.R4 is the letter, dated 14-12-2002 issued to the petitioner informing about his absent for 63 days in the year 2002 and they warned him that if such act will continue, his future benefits will be cancelled. According to the respondent, Ex.R4 could not be served to the petitioner, since he refused to receive the same. Ex.R5 is the copy of the memo., dated 17-4-2003 issued to the petitioner informing the particulars of leave taken by him. Ex.R6 is the copy of the memo., dated 20-1-2004 seeking his explanation for his absence of 69 days in 2002 and 34 days in 2003. Ex.R7 is the copy of the memo issued to the petitioner pointing out that the petitioner had absented from work on 11-1-2004 and 13-1-2004 without any permission or prior approval but entered into ESI sick leave again and that he had attended work only for 3 ½ days in January 2004 and advised him to submit himself to the medical examination by a Medical Practitioner of the company choice. Ex.R8 is the copy of the letter sent to the petitioner advising him to remove his name from the muster roll. During the cross-examination, RW.1 has denied the suggestion that Ex.R1 to Ex.R8 have been created for the purpose of this case.

9. According to the petitioner, since they were started a labour union and he along with some other workers were the members in the said union, he was denied employment from 22-2-2004. But during the cross-examination, the petitioner has admitted that he was dismissed by the respondent management. He also admitted that he had absented from work for 34 days during the period from 1-1-2003 to 31-12-2003 on various dates without any permission or prior approval. Since the petitioner himself has admitted that he had absented for duty without any permission, this court has come to the conclusion that the respondent has proved the misconduct of the absenteeism by the petitioner.

10. The learned counsel for the petitioner would submit that the order of dismissal was given without holding any domestic enquiry or issuing show cause notice is against the natural justice.

11. On the other hand, the learned counsel for the respondent would submit in spite of several notices given to the petitioner, he has not come forward to cooperate with them to conduct the domestic enquiry.

12. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the misconducts of the petitioner, as alleged by the respondent. In this case, though the petitioner has admitted about his absent for duty, he has stated that the respondent management has insisted to come out from the labour union and since the respondent management has acted against the labour legislations, he did not go for work.

13. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner has committed misconducts of unauthorised absent, they have to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, the respondent, without conducting the domestic enquiry, has taking action against the petitioner directly by dismissing him from service. When the petitioner was working in the respondent company for more than five years without any interruption, it was necessary to have given opportunity to the petitioner before terminating him from service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Therefore, the termination of service of the petitioner was bad in law. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:—

2009 (III) LLJ 373 (SC) :

“When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered”.

In this case, the respondent has not raised any serious misconduct against the petitioner prior to misconduct of unauthorised absence. Hence, the misconduct that is alleged would definitely amount to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified and hence he has to be reinstated into service. But considering the facts and circumstances of the case, the petitioner is not entitled for continuity of service and back wages. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the respondent management is hereby directed to reinstate the petitioner into service. However, he is not entitled for continuity of service and back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of December 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry.

List of witnesses examined for the petitioner :

PW.1 — 18-3-2010 — Raguraman

List of witnesses examined for the respondent :

RW.1 — 23-9-2010 — P. Gnanagurupatham

List of exhibits marked for the petitioner :

Ex.P1 — Copy of the letter, dated 6-2-2006 sent to the Conciliation Officer.

Ex.P2 — Copy of the letter, dated 29-5-2006 sent to the Conciliation Officer.

Ex.P3 — Copy of the failure report, dated 14-8-2007

Ex.P4 — Copy of the notification, dated 14-11-2007

List of exhibits marked for the respondent :

Ex.R1 — Copy of the letter, dated 6-2-2006 sent by the petitioner to the Conciliation Officer.

Ex.R2 — Letter, dated 15-4-1996 sent by the petitioner to the respondent.

Ex.R3 — Copy of the letter, dated 25-8-1999 sent by the respondent to the petitioner.

Ex.R4 — Copy of the letter, dated 14-12-2002 sent by the respondent to the petitioner.

Ex.R5 — Copy of the letter, dated 17-4-2003 sent by the respondent to the petitioner.

Ex.R6 — Copy of the letter, dated 20-1-2004 sent by the respondent to the petitioner.

Ex.R7 — Copy of the letter, dated 24-1-2004 sent by the respondent to the petitioner.

Ex.R8 — Copy of the letter, dated 3-2-2004 sent by the respondent to the petitioner.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court.
Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 89/AIL/Lab./J/2011, dated 15th April 2011)

NOTIFICATION

Whereas, the Award in I.D.No. 34/2007, dated 21-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Unicorn (Bangalore) Private Limited, Puducherry and Thiru D. Mohan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

*Tuesday, the 21st day of December 2010***I. D. No. 34/2007**

D. Mohan,
22, Nellumandi Street,
Muthirapalayam,
Pondicherry-605 009 . . . Petitioner

Versus

The Managing Partner,
Unicorn (Bangalore)
Private Limited,
Mettupalayam, Pondicherry . . . Respondent

This industrial dispute coming on 20-12-2010 for final hearing before me in the presence of Thiru R.S. Zivanandam, advocate for the petitioner and TvI. K.V. Shanmuganathan and L. Vivekananthan and Mrs. V. Vijayanthimala, advocates for the respondent, upon hearing both sides, upon perusing the case records after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry vide G.O. Rt. No.153/2007/Lab./AIL/J, dated 12-11-2007 for adjudicating the following:-

1. Whether the non-employment of Thiru D. Mohan by the management of M/s. Unicorn (Bangalore) Private Limited, Pondicherry is justified or not?

2. To what relief, he is entitled to?

3. To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was an employee as Machine Operator from 21-6-1999. The workers formed a trade union. Therefore the management did not allow the entire work force to work exactly 60 members from February 2004 and hence the union raised industrial disputes with the management and also before the Labour Officer (Conciliation). Before the Labour Officer (Conciliation), the management did not heed the request of the petitioner. Therefore, an industrial dispute has been referred to the court. In the reference, the name of the petitioner has been left out and hence he raised a separate dispute on 27-11-2006, wherein which the management alleged that the petitioner has done a serious misconduct of habitual absence without leave. The reply made by the management undated admitting the petitioner's capacity and denying the culpabilities of the management in not allowing the workers to work after starting the trade union. Therefore, the management wants to remove the petitioner from the rolls of the company. Since the petitioner has involved in the union activities, he was dismissed from service without conducting any domestic enquiry and therefore it has violated the principle of natural justice. Hence, this industrial dispute is filed.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was appointed as trainee in the respondent company on 21-6-1999 and during the year 2001, the management of the respondent company was taken over by the present management. The petitioner was on probation when the present management took over the respondent company. The petitioner used to absent unauthorised. In fact he was found sleeping while on duty in the third shift on 5-12-2003. He was caught red handed, however, he was let off with warning.

While the petitioner was on probation, he did not evince any interest in his work. In fact he had tendered resignation on 9-12-2003. Subsequent he came back to work on 10-1-2004. Later he had abstained from work with effect from 7-2-2004. He did not apply for leave. The petitioner was only a probationer and he had no lien on any post. The petitioner did not make any representation to the respondent seeking for reinstatement immediate after the so called termination on 9-2-2004. The petitioner has raised the present dispute only to make wrongful gain from the management. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P4 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R5 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point:

It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he was an Executive Committee member in the Union of the Industrial Estate Workers functioning in the respondent company and since he was involved in the union activities, he along with some other workers were denied employment and subsequently he was dismissed from service without holding any domestic enquiry. In order to prove the same, the petitioner was examined as PW.1 and PW.1 in his evidence has deposed the said version and Ex.P1 to Ex.P4 were marked.

7. *Per contra*, the contention of the respondent is that he was on probation when the present management took over the respondent company and he used to absent unauthorised and in fact he was found sleeping while on duty in the third shift on 5-12-2003. In order to prove the same, the Manager of the respondent company was examined as RW.1, who has stated the said facts and Ex.R1 to Ex.R5 were marked.

8. Heard both sides. Perused the case records. The main allegation of the respondent against the petitioner is that he used to absent unauthorisedly. But he has not produced any document to show that he was irregular in reporting the duty. If the contention of the respondent is true, they would have issued memo. to the petitioner and taken action against him. But no such memo. has been filed by the respondent to prove the said contention. RW.1 in his evidence has also admitted that he did not send any show cause notice for the unauthorised absent of the petitioner. The relevant portion of his evidence runs as follows:-

“மனுதாரர் பணிக்கு தொடர்ந்து வராததினால் மீண்டும் அறிவிப்பு கடிதம் கொடுத்தோமா என்றால் கொடுக்கவில்லை.”

Hence, the respondent has failed to prove that the petitioner was absent unauthorisedly.

9. According to the respondent, the petitioner was found sleeping while on duty in the third shift on 5-12-2003. In order to prove his contention, the respondent has marked a show cause notice issued to the petitioner as Ex.R4. In Ex.R4 it has been mentioned that the petitioner was found sleeping on 6-12-2003 at 4.35 a.m. while he was on duty and the same was noticed by one P. Manimaran, who was a Shift In-charge. Ex.R5 is the apology letter submitted by the petitioner to the respondent management, wherein the petitioner has admitted that he was sleeping while he was on duty on 6-12-2003 and executed the management for the said misconduct. Though the respondent has proved that the petitioner was sleeping while he was on duty on 6-12-2003, since the respondent himself has admitted that the petitioner was let off with warning, much importance cannot be given to Ex.R4 and Ex.R5.

10. The learned counsel for the respondent would further submit that while the petitioner was on probation, he did not evince any interest in his work and in fact, he had tendered his resignation on 9-12-2003 and subsequently he came back to work on 10-1-2004. The respondent has marked the resignation letter submitted by the petitioner to the respondent as Ex.R2, which would confirm the said fact. On the side of the respondent, the letter, dated 10-1-2004 submitted by the petitioner to the respondent was marked as Ex.R3, wherein the petitioner has requested the respondent management to admit him in service and the respondent management has considered the request of the petitioner as a special case and admitted him in service. Hence, much weightage can also be given to Ex.R2 and Ex.R3.

11. The learned counsel for the petitioner would submit that the order of dismissal was given without holding any domestic enquiry or issuing show cause notice which is against the natural justice.

12. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the misconducts of the petitioner, as alleged by the respondent and it is evident that on verbal instruction given by the respondent, the petitioner was dismissed from service.

13. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner was continuously absent without getting any prior sanction or sleeping while he was on duty, the respondent has to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the

petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, no domestic enquiry was conducted by the respondent and they dismissed the service of the petitioner on verbal instruction. When the petitioner was working in the respondent company for more than five years without any interruption, it was necessary to have given opportunity to the petitioner before terminating him from service. Neither no such opportunity was given to the petitioner, nor principles of natural justice have been complied with. Therefore, the termination of service of the petitioner was bad in law. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:-

2009 (III) LLJ 373 (SC)

"When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered".

In this case, the respondent has not raised any serious misconduct against the petitioner prior to misconduct of sleeping while he was on duty. Hence, the misconduct that is alleged would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified and hence he has to be reinstated into service. But considering the facts and circumstances of the case, the petitioner is not entitled for continuity of service and back wages. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the respondent management is hereby directed to reinstate the petitioner into service. However, he is not entitled for continuity of service and back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 21st day of December 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW.1—25-3-2010— D. Mohan

List of witnesses examined for the respondent :

RW.1—16-9-2010— P. Gnanagurupatham

List of exhibits marked for the petitioner :

Ex.P1 — Copy of the letter, dated 27-11-2006 sent to the Conciliation Officer by the petitioner.

Ex.P2 — Letter, dated nil sent by the respondent to Conciliation Officer.

Ex.P3 — Copy of the letter, dated 8-8-2007 sent to Secretary to Government.

Ex.P4 — Copy of the notification, dated 12-11-2007.

List of exhibits marked for the respondent :

Ex.R1 — Copy of the letter, dated 1-6-2006 sent by the petitioner.

Ex.R2 — Letter, dated 9-12-2003 sent by the petitioner to the respondent.

Ex.R3 — Letter, dated 10-1-2004 sent by the petitioner to the respondent.

Ex.R4 — Copy of the letter, dated 6-12-2003 sent to the petitioner.

Ex.R5— Letter, dated nil sent by the petitioner to the respondent.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 90/AIL/Lab./J/2011, dated 15th April 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 12/2008, dated 17-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Ajantha Cycle Parts Industry, Puducherry and Thiru K. Parthasarathi over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Friday, the 17th day of December 2010

I. D. No. 12/2008

Thiru K. Parthasarathi,
36-A, Indira Gandhi Street,
Israel Nagar, Pondicherry. . . Petitioner

Versus

The Managing Partner,
Ajantha Cycle Parts Industry,
Thattanchavady, Pondicherry. . . Respondent

This industrial dispute coming on 13-12-2010 for final hearing before me in the presence of Thiru P. Sankaran, advocate for the petitioner and Thiru C. Jagadeesan, advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G. O. Rt. No. 90/2008/AIL/Lab./J, dated 2-6-2008 for adjudicating the following :

(1) Whether the dispute raised by Thiru K. Parthasarathi against the management of M/s. Ajantha Cycle Parts Industries, Pondicherry over his non-employment is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement, has averred as follows:

The petitioner was working as Shaping Man from December 1990 in the respondent company to the utmost satisfaction of the company. From 6-10-2005 he went on leave and when he reported for duty on 31-10-2005, the respondent company refused to give the employment. The respondent management, without conducting any domestic enquiry, have dismissed him from service, which is against the labour law. The petitioner was working for fifteen years in the respondent company and since the union was started, they took revenge against him. Hence, this industrial dispute is filed for reinstatement with continuity of service, back wages and other benefits.

3. In the counter statement, the respondent has stated as follows :

The petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation. Hence on 25-10-2005 the respondent sent a letter advising the petitioner to join duty on or before 31-10-2005. The petitioner received the said notice and failed to join duty and continued to be absent. Again on 2-12-2005 the respondent sent a letter informing him to join duty on or before 8-12-2005. But the said letter was returned with an endorsement "Refused". On 15-12-2006 the respondent sent a letter to the petitioner to join duty within 10 days from the date of receipt of the letter. But the said letter returned with an endorsement "Not claimed". Hence, the petitioner is not entitled for any relief under any circumstances for his unauthorised absence and voluntarily withdrew from his employment, even after repeated reminders sent to him. Hence, he prays for dismissal of the industrial dispute.

4. No oral evidence was adduced on either side and Ex.P1 to Ex.P6 were marked on the side of the petitioner and Ex.R1 to Ex.R8 were marked on the side of the respondent.

5. The point for determination is :

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point:

The contention of the petitioner is that he was working as Shaping Man from December 1990 in the respondent company to the utmost satisfaction of the company. From 6-10-2005 he went on leave and when he reported for duty on 31-10-2005, the respondent company refused to give the employment. The respondent management, without conducting any domestic enquiry, have dismissed him from service, which is against the labour law. He was working for fifteen years in the respondent company and since the union was started, they took revenge against him.

7. *Per contra*, the contention of the respondent is that petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation. Hence on 25-10-2005 the respondent sent a letter advising the petitioner to join duty on or before 31-10-2005. The petitioner received the said notice and failed to join duty and continued to be absent. Again on 2-12-2005 the respondent sent a letter informing him to join duty on or before 8-12-2005. But the said letter was returned with an endorsement "Refused". On 15-12-2006 the respondent sent a letter to the petitioner to join duty within 10 days from the date of receipt of the letter. But the said letter returned with an

endorsement "Not claimed". Hence, the petitioner is not entitled for any relief under any circumstances for his unauthorised absence and voluntarily withdrew from his employment, even after repeated reminders sent to him.

8. It is an admitted fact that the petitioner was an employee in the respondent company. The main contention of the petitioner is that he went on leave from 6-10-2005 and when he reported for duty on 31-10-2005, he was refused to work by the respondent company. On the other hand, the respondent would submit that the petitioner was absent from duty from 3-10-2005 without applying any leave or prior intimation.

9. On perusal of records, it is seen that the petitioner has not produced any documentary evidence to show that he went on leave after getting prior permission from the respondent management. The petitioner is an employee under the respondent company and it is for him to get prior sanction from his employer and then to proceed on leave that too when he proceeded on long leave. In this case, the respondent has not sanctioned any leave to the petitioner.

10. According to the respondent, since the petitioner was absent for duty from 3-10-2005 onwards without applying any leave or prior intimation, on 25-10-2005 they sent a letter advising him to join duty on or before 31-10-2005 and he received the said notice but he continued to be absent. In order to prove his contention, the respondent has marked the letter Ex. R1, dated 25-10-2005 wherein the respondent has informed the petitioner that he has to join duty on or before 31-10-2005 otherwise his name will be deleted from the company records. Ex. R3 is another letter dated 2-12-2005 sent to the petitioner by the respondent wherein they informed that since the petitioner has not joined duty, he has to give explanation for the same on or before 8-12-2005 and if he failed to submit the explanation, it will be construed that he abandoned his services. Ex. R1 letter has been received by the petitioner under acknowledgment card Ex.R2. Ex.R3 has been returned with an endorsement "Refused" which has been marked as Ex. R4. Ex. R5 is another letter sent by the respondent to the petitioner asking for explanation for continuous absent and the said letter was also returned with endorsement "Not claimed", which has been marked as Ex.P6. From the documents filed on the side of the respondent, it is seen that in spite of several opportunities given by the respondent, the petitioner has not given any explanation for his continuous absent and hence this court comes to the conclusion that the petitioner has unauthorisedly absent and he went on leave without obtaining prior permission from the respondent management. Though on the side of the petitioner, Ex. P1 to Ex. P6 were marked, the said documents are not in any way helpful to his case.

11. The contention of the petitioner is that without giving opportunity to him and without conducting any domestic enquiry, he was dismissed from service by the respondent, which is against labour legislations.

12. On perusal of records, it is seen that the respondent has not conducted any domestic enquiry for the alleged misconduct of the petitioner. In this case, since the petitioner was absent from 3-10-2005, the respondent sent a letter Ex.R1 informing the petitioner to join duty on or before 31-10-2005 and since the petitioner has not joined duty, another two letters have been sent to him to give explanation for his unauthorised absence and since there is no response from the petitioner, he was dismissed from service *vide* letter, dated 28-2-2006 Ex. R7.

13. The respondent being an employer, has to safeguard the interest of their employees. When the petitioner is continuously absent without getting any prior sanction, he has to conduct the domestic enquiry and in the enquiry, opportunity has to be given to the petitioner to peruse the records and cross-examine the management witnesses and after complying all the formalities only, they have to take action against him. In this case, the respondent has not conducted any domestic enquiry and has violated the principles of natural justice. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:

2009 (III) LLJ 373 (SC) Jagdish Singh Vs. Punjab Engineering College and Others :-

"When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered"

In this case, the respondent has not raised any serious misconduct prior to the present absenteeism. Hence, the misconduct that is alleged would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, this court comes to a conclusion that the non-employment of the petitioner from service is not justified. But at the same time the available records would clearly prove that the petitioner was proceeding on leave without getting prior permission from the

respondent. Therefore, considering the facts and circumstances of the case, the petitioner is entitled for reinstatement in service with continuity of service but not entitled for back wages. Accordingly, this point is answered.

14. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 17th day of December 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner: Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner:

- Ex. P1 — Letter, dated 25-10-2005 sent to the petitioner.
- Ex. P2 — Copy of the letter, dated 23-2-2006 sent to the respondent by petitioner.
- Ex. P3 — Letter, dated 28-2-2006 sent to the petitioner
- Ex. P4 — Copy of the letter, dated 24-5-2006 sent to the Conciliation Officer.
- Ex. P5 — Copy of the letter, dated 19-9-2006
- Ex. P6 — Letter, dated 25-1-2008 sent to the Secretary to Government (Labour).

List of exhibits marked for the respondent:

- Ex. R1 — Copy of the letter, dated 25-10-2005 sent to the petitioner.
- Ex. R2 — Acknowledgment card
- Ex. R3 — Copy of the letter, dated 2-12-2005 sent to the petitioner.
- Ex. R4 — Returned postal cover
- Ex. R5 — Copy of the letter, dated 15-12-2005 sent to the petitioner.
- Ex. R6 — Returned postal cover
- Ex. R7 — Letter, dated 28-2-2006 sent to the petitioner
- Ex. R8 — Acknowledgment card.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(GO. Rt. No. 91/AIL/Lab./II/2011, dated 15th April 2011)

NOTIFICATION

Whereas, the Award in I.D.No.9/2008, dated 20-12-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills over correction of date of birth of Thiru D. Arumugam has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present: Thiru T. MOHANDASS. M.A, B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Monday, the 20th day of December 2010

I.D. No. 9/2008

The President,
Pudhuvai Mill Thozhilalar Sangam,
Mudaliarpeth, Pondicherry Petitioner

Versus

The General Manager,
Sri Bharathi Mills,
Pondicherry. Respondent

This industrial dispute coming on 14-12-2010 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner and Ms. V. Usha, advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.78/AIL/Lab./J/2008, dated 9-4-2008 for adjudicating the following:-

(1) Whether the dispute raised by Pudukai Mill Thozhilalar Sangam seeking correction of date of birth of D. Arumugam as 15-1-1953 instead of 20-3-1950 based on the Birth Certificate issued by the Pondicherry Municipality, Puducherry against the management of M/s. Sri Bharathi Mills, Puducherry is justified or not.

(2) To what remedy, the petitioner is entitled to?

2. The petitioner, in his claim statement, has averred as follows:

The workman D. Arumugam was a member in the petitioner union and he was working in the respondent mill for the past 37 years. Based on the Transfer Certificate given by the petitioner to the respondent, his date of birth is mentioned as 20-3-1950 in the Attendance Register, Provident Fund Records and other records maintained by the respondent mill. Actually his date of birth mentioned in the Transfer Certificate is wrong and his actual date of birth is 15-1-1953. After computerised all the records in the respondent mill, he came to know the said fact. He also found that his father's name is also wrongly mentioned in the records maintained by the respondent mill. Hence, he submitted a letter, dated 13-3-1986 requesting the respondent management to correct his date of birth and his father's name. But the respondent mill has not taken any steps to correct the same. The said employee submitted a letter on 13-3-1986 and after continuous persuasion, the management *vide* its letter, dated 22-4-1987 demanded a court order to the effect of changing the date of birth and father's name of the employee. Again the petitioner has submitted a letter, dated 18-3-1992 requesting to rectify the said mistake, but the respondent mill has corrected only his father's name. Hence, this industrial dispute is filed to correct the date of birth of the petitioner as 15-1-1953 instead of 20-3-1950 in the records maintained by the respondent mill. Since he went on superannuation, he also prays this court to reinstate him with effect from 20-3-2010.

3. In the counter statement, the respondent has stated as follows :

It is true that the employee by name D. Arumugam is working for the past 37 years in the Roving Department of the respondent mills. He denied that the said workman came to know that his

date of birth was entered as 20-3-1950 instead of 15-1-1953 only during 1986. If the contention of the employee is to be considered true, he would not have given the nomination and declaration form (Form No.2) under the Family Pension Scheme (Provident Fund) on 20-4-1998 in which he has mentioned that his date of birth is 20-3-1950. The respondent management made change in the name of the employee's father as Daruman after verifying many records such as the employee's school certificate, voter's identity card, ration card *etc.*, wherein the details regarding the date of birth of the said employee was not available and hence the correction was done with regard to his father's name and not to his date of birth. Hence, he prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 to Ex.P7 were marked and on the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R4 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

This case was posted for argument of respondent side from 25-11-2010 for seven hearings. But neither the respondent nor his counsel has appeared before this court to argue the matter. Finally this case was posted today for argument of respondent side. Today also the respondent or his counsel has not appeared before this court. Hence, this court feels that there is no use to adjourn this case further unnecessarily.

7. The contention of the petitioner is that his date of birth is wrongly mentioned as 20-3-1950 instead of 15-1-1953 in the records maintained by the respondent mill and hence he prays this court to correct the same in the said records.

8. *Per contra*, the contention of the respondent is that in the nomination and declaration form, the petitioner has mentioned his date of birth as 20-3-1950 and without obtaining any order from the competent court, the date of birth cannot be corrected.

9. On the side of the petitioner, his birth certificate was marked as Ex.P1. A perusal of Ex.P1 would show that the date of birth of the petitioner is mentioned as 17-1-1953. Ex.P1 is not challenged by the respondent. Hence, the petitioner has proved that his date of birth is 17-1-1953.

10. According to the petitioner, the date of birth of the workman Arumugam is wrongly mentioned as 20-3-1950 instead of 17-1-1953 and his father's name was also wrongly mentioned and when he requested the respondent mill to correct the same, he was advised to get the court order, but subsequently his father's name has been corrected, but refused to correct his date of birth.

11. The contention of the respondent is that the management of the mill made change in the name of the employee's father as Dharuman after verifying many records such as the employee's school certificate, voter's identity card, ration card *etc.*, wherein the details regarding the date of birth of the said employee was not available and hence the correction was done with regard to his father's name and not to his date of birth.

12. But as already stated, the petitioner has produced the date of birth of the said employee Ex.P1 in which his date of birth is mentioned as 15-1-1953. Ex.P1 is an authenticated public document, which has been issued by the Registrar, Pondicherry Municipality. According to the petitioner, after producing the said document before the respondent mill and requesting for correction of the date of birth, the respondent refused to correct the same and demanded for court order. As per the Evidence Act, it is the duty of the petitioner to prove that his date of birth is 15-1-1953. In order to prove the said fact, the petitioner has filed his birth certificate Ex.P1 issued by the Pondicherry Municipality, who is a competent authority to issue the birth certificate. Ex.P1 was relied on by the petitioner as primary evidence for his case. It is relevant to mention section 35 of Indian Evidence Act:-

"35. Relevancy of entry in public (record or an electronic record) made in performance of duty. -

An entry in any public or other official book, register or (record or an electronic record) stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or (record or an electronic record) is kept, is itself a relevant fact."

As per section 35 of Indian Evidence Act, an entry in any public or other official book or register maintained by a public servant is a relevant fact. Section 74 of the Indian Evidence Act says about the public document, which runs as follows:-

74. Public documents.-The following documents are public documents:-

(1) Documents forming the acts, or records of the acts —

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive or of a foreign country.

(2) Public records kept in any state of private documents. It is further to refer section 62 of Indian Evidence Act, which runs as follows:-

"62. Primary evidence - Primary evidence means the document itself produced for the inspection of the Court."

According to section 74 of Indian Evidence Act, Ex.P1, which was issued by the competent authority is a public document. In this case, the petitioner has produced Birth Certificate Ex.P1, which is a vital document to prove his case and the same was produced by the petitioner before this court.

13. The respondent submitted in their counter that the petitioner has given the nomination and declaration form (Form No. 2) under the Family Pension Scheme (Provident Fund) on 20-4-1998 in which he has mentioned that his date of birth is 20-3-1950.

14. On the side of the respondent, one Muthukumaran, General Manager of the respondent mill was examined as RW.1. RW.1 in his evidence has stated that the workman Arumugam has stated in his nomination and declaration form that his date of birth is 20-3-1950. But during the cross-examination, RW.1 has admitted that after computerised all the records in the respondent mill, the particulars regarding the date of birth of the employee's and the educational qualification were mentioned in the nomination and declaration form. RW.1 further stated that prior to 1986, the salary slip was issued to the said employee and the particulars regarding the date of birth and father's name have not been mentioned in the said salary slip. RW.1 further stated that at the time of joining duty, the particulars regarding the date of birth and the educational qualification were obtained from the said employee and the said particulars have been given by the said employee orally. The relevant portion of his evidence is as follows:-

“சேமநல நிதி படிவம் 2 மற்றும் சம்பள ரசீது ஆகியவற்றில் மனுதாரரின் பிறந்த தேதி, மாதம் ஆண்டு குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். மனுதாரரின் தந்தை பெயரும் குறிப்பிடப்பட்டுள்ளது. 1986க்கு முன்னால் அவருக்கு சம்பள ரசீது கொடுக்கப்பட்டுள்ளது. ஆனால் அந்த சம்பள ரசீதில் மேற்படி தந்தை பெயர், பிறந்த தேதி ஆகியவை குறிப்பிடப்பட்டு இருந்ததா என்று எனக்கு ஞாபகம் இல்லை.

மனுதாரர் ஆலையில் சேரும்போது அவரிடம் வாய்மொழியாக அந்தக் காலக் கட்டத்தில் பிறந்த தேதி மற்றும் கல்வித் தகுதி ஆகியவை கேட்டு குறித்துக் கொள்ளப்பட்டன. அப்படி அவர் குறிப்பிட்ட விவரங்கள் குறித்த மனுதாரர் வசம் கையொப்பம் பெறப்பட்டதா என்றால் பழைய ஆவணங்கள் தற்போது எங்கள் நிர்வாகத்தில் இல்லை.

From the above evidence of RW.1, it could be inferred that the particulars regarding the date of birth of the employee, his father's name and his educational qualification have been obtained by the respondent mill, on oral information given by the concerned employee at the time of joining duty and the same have been entered by them in the nomination and declaration form.

15. Now we have to see whether this court has got jurisdiction to direct the management to correct the date of birth as prayed for. In this case there is no dispute about employment of the petitioner with the respondent. As per the Second Schedule of Industrial Disputes Act, 1947, there are six items to be tried by the Labour Courts. Sixth item says that "all matters other than those specified in the Third Schedule." Hence, when applying the sixth item to the present case, this court has got jurisdiction to decide the relief of the petitioner.

16. When the employee requested the management to correct the date of birth subsequently, based on Ex.P1, it is the duty of the respondent to correct the same. Hence, this court comes to the conclusion that the petitioner has proved that the date of birth of the workman by name Arumugam is 15-1-1953 through Ex.P1 and hence, the respondent is hereby directed to correct the date of birth of the said employee Arumugam as 15-1-1953 instead of 20-3-1950 in all the registers maintained by the respondent mill and consequently, the order of superannuation passed by the respondent management is set aside. Since the said Arumugam was sent on superannuation on 20-3-2010, the respondent is also directed to reinstate the said Arumugam in service with effect from 20-3-2010. Accordingly, this point is answered.

17. In the result, the industrial dispute is allowed. The respondent is hereby directed to correct the date of birth of the workman Arumugam as 15-1-1953 in all the registers maintained by the respondent. The order of superannuation passed by the respondent management is set aside and the respondent is hereby directed to reinstate the said Arumugam in service with effect from 20-3-2010. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 20th day of December 2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

PW.1 — 17-12-2009 - D. Arumugam

List of witnesses examined for the respondent:

RW.1 — 1-7-2010 - Muthukumaran

List of exhibits marked for the petitioner:

Ex.P1 — Birth certificate of Arumugam

Ex.P2 — Superannuation notice issued to the said Arumugam, dated 15-2-2010.

Ex.P3 — Copy of the letter, dated 19-2-2010 sent by the respondent.

Ex.P4 — Copy of pay slip of the said Arumugam

Ex.P5 — Copy of the letter, dated 16-10-2007 sent to Labour Officer.

Ex.P6 — Copy of the letter, dated 11-12-2007 sent by the petitioner.

Ex.P7 — Pay slip of Arumugam

List of exhibits marked for the respondent:

Ex.R1 — Copy of nomination and declaration form.

Ex.R2 — Letter, dated 13-3-1986 sent by the said Arumugam to the respondent.

Ex.R3 — Reply letter, dated 22-4-1987 sent by the respondent

Ex.R4 — Copy of superannuation notice, dated 15-2-2010.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (EDUCATION-I)

(G.O. Ms. No. 39, dated 8th April 2011)

NOTIFICATION

The Lieutenant-Governor is pleased to accept the resignation tendered by Thiru M.O.H.F. Shajahan, Hon'ble Minister for Higher Education, Government of Puducherry from the Office of the Chairman of Pondicherry Institute of Post-Matric Technical Education, (PIPMATE), Pondicherry Society for Higher Education (PONSHE), Puducherry, Engineering College (Pondicherry) Society (Pondicherry Engineering College, Puducherry) and Engineering College (Karaikal) Society (Perunthalaivar Kamarajar Institute of Engineering and Technology, Karaikal), with effect from 23-3-2011. The Secretary to Government (Education) shall hold the charge of Chairman/Chairperson of all the above Societies.

(By order of the Lieutenant-Governor)

L. MOHAMED MANSOOR,
Joint Secretary to Government (Edn.).